

HOUSE BILL 378

By Briley

AN ACT to amend Tennessee Code Annotated, Title 22,
Chapter 1; Title 22, Chapter 2; Title 22, Chapter 3
and Title 22, Chapter 4, relative to jury service.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 22-1-101, is amended by adding the following language at the beginning of the section:

It is policy of this state that all qualified citizens have an obligation to
serve on petit juries when summoned by the courts of this state, unless excused.

SECTION 2. Tennessee Code Annotated, Section 22-1-103, is amended by deleting such section in its entirety and substituting instead the following:

§ 22-1-103.

(a) The following persons are exempt from liability to act as jurors:

(1) All persons over sixty-five (65) years of age; and

(2) All persons not in the full possession of the senses of hearing or
seeing if the court determines, of its own volition or on motion of either party, that
such person cannot provide adequate service as a juror on such jury.

(b) Service in the national guard shall be accepted in lieu of all jury duty while
actually in the military service of the state.

SECTION 3. Tennessee Code Annotated, Section 22-1-104, is amended by deleting such section in its entirety and substituting instead the following:

§ 22-1-104.

(a) Any person may be excused from serving as a juror, when the prospective
juror has a mental or physical condition that causes that person to be incapable of
performing jury service. The juror, or the juror's personal representative, must provide

the court with documentation from a physician licensed to practice medicine verifying that a mental or physical condition renders the person unfit for jury service for a period of up to twenty-four (24) months.

(b) Any person, when summoned to jury duty, may be excused upon a showing that such person's service will constitute an undue or extreme physical or financial hardship to the prospective juror or a person under the prospective juror's care or supervision.

(1) A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to court officials or personnel who are authorized by the laws of this state to function as members of the judiciary.

(2) A person asking to be excused based on a finding of undue or extreme physical or financial hardship shall take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

(3) For purposes of this section, "undue or extreme physical or financial hardship" is limited to circumstances in which an individual would:

(A) Be required to abandon a person under such individual's personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury;

(B) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on

those for whom such individual provides the principle means of support;
or

(C) Suffer physical hardship that would result in illness or
disease.

(4) Undue or extreme physical or financial hardship does not exist solely
based on the fact that a prospective juror will be required to be absent from that
prospective juror's place of employment.

(5) A person asking a judge to grant an excuse based on undue or
extreme physical or financial hardship shall be required to provide the judge with
documentation, such as, but not limited to, federal and state income tax returns,
medical statements from licensed physicians, proof of dependency or
guardianship, an affidavit stating that the person is unable to obtain an
appropriate substitute caregiver during the period of participation in the jury pool
or on the jury, or similar documents, which the judge finds to clearly support the
request to be excused. Failure to provide satisfactory documentation shall result
in a denial of the request to be excused.

(c) The grounds of excuse in this section shall be deemed to be cumulative of
any other grounds of excuse available or that may otherwise exist in the law.

(d) Persons seventy (70) years of age or older may submit a written statement to
the court or jury commissioner requesting to be excused under this section instead of
appearing in person.

(e) Documents submitted pursuant to this section are not public records and
shall not be disclosed to the general public.

(f) After twenty-four (24) months, a person excused from jury service shall
become eligible once again for qualification as a juror unless the person was excused

from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

SECTION 4. Tennessee Code Annotated, Section 22-2-307, is amended by deleting subsections (b) and (c) and substituting instead the following:

(b) If any person so summoned fails to appear for service as directed, who has not been excused or discharged by the judge or had that person's service postponed in accordance with § 22-2-315, a scire facias shall issue and be served upon the person, requiring the person to appear instanter or at the next term, in the discretion of that court, and show cause why the person should not be held in civil contempt of court for the person's failure to appear.

(c) Upon the appearance of any person served with a scire facias, the person may make the person's excuse known; if the person was summoned and if the excuse is sufficient, in the opinion of the judge, such person shall be excused; but the person shall pay the cost incident to issuance and service of the scire facias. If the excuse be insufficient, such person shall be adjudged in civil contempt of court and shall be fined not exceeding five hundred dollars (\$500) and the costs of the scire facias. The prospective juror may be excused from paying sanctions for good cause shown or in the interests of justice. In addition to, or in lieu of, the fine, the court may order that the prospective juror complete a period of community service for a period of no less than if the prospective juror would have completed jury service, and provide proof of completion of this community service to the court.

SECTION 5. Tennessee Code Annotated, Section 22-2-308, is amended by deleting subsection (d) and substituting instead the following:

(d) The court shall not have the right to excuse any person summoned as a regular juror who is qualified for service except as provided in §§ 22-1-103 and 22-1-104.

SECTION 6. Tennessee Code Annotated, Section 22-2-314, is amended by deleting such section in its entirety and substituting instead the following:

§ 22-2-314.

(a) A prospective juror shall serve for no more than one (1) court day in actual attendance, unless the prospective juror is selected to serve in a trial, or is under consideration to serve on a trial and such consideration covers a period of two (2) or more days. Once selected, a juror shall serve on the jury for the duration of the trial unless excused by the presiding judge.

(b) The supreme court may grant an exemption from the requirements of subsection (a) for a specified period of time to a judicial district in a county with a population of less than one hundred thousand (100,000) if the judicial district demonstrates good cause by establishing that:

(1) The cost of implementing a one-day/one-trial system is so high that the judicial district would be unable to provide essential services to the public if required to implement such a system; or

(2) The requirements of this rule cannot be met because of the size of the population in the county compared to the number of jury trials.

(c) Any application for exemption from the requirements of subsection (a) shall demonstrate good cause for the exemption sought and shall include either:

(1) A plan to fully comply with subsection (a) by a specified date; or

(2) An alternative plan that would advance the purposes of this section to the extent possible, given the conditions in the county.

(d) If the supreme court finds good cause, it may grant an exemption for a limited period of time and on such conditions as it deems appropriate to further the purposes of this section, but in no case shall service of prospective jurors be more than one (1) week in actual attendance, unless a prospective juror is selected to serve in a trial or is under consideration to serve on a trial.

(e) The jury commissioners shall keep a record of the days each person has served on juries.

(f) Actual service upon a jury shall include not only those days on which the person may have been actually sitting on the jury in the trial of causes, but also those days in actual attendance upon the court, though not actually sitting upon the cause on trial.

(g) A juror who has served on a petit jury in this state shall not be summoned to serve again as a petit juror in any court of this state for two (2) years following the last day of such service.

(h) The limitation imposed by this section shall not prohibit a juror from sitting during the entire trial in any cause; and shall not apply to grand juries, which shall serve for one (1) whole term.

SECTION 7. Tennessee Code Annotated, Section 22-2-315, is amended by designating the existing language as subsection (a) and by adding the following language as new subsections thereto:

(b) Notwithstanding subsection (a), individuals scheduled to appear for jury service may request a postponement of the date of their initial appearance for jury service. When requested, postponements shall be granted, provided that:

(1) The juror has not previously been granted a postponement;

(2) The prospective juror appears in person or contacts the clerk of the court by telephone, electronic mail, or in writing to request a postponement; and

(3) Prior to the grant of a postponement with the concurrence of the clerk of the court, the prospective juror fixed a date certain on which such juror will appear for jury service that is not more than six (6) months after the date on which the prospective juror originally was called to serve and on which date the court will be in session.

(c) A subsequent request to postpone jury service may be approved by a judicial officer only on the basis of an extraordinary event, such as a death in the prospective juror's family, sudden grave illness, or a natural disaster or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six (6) months of the postponement on a date when the court will be in session.

(d) A court shall automatically postpone and reschedule the service of a summoned juror who is employed by an employer who employs on a regular basis less than five (5) people, or their equivalent, if another employee of that employer has previously been summoned to appear during the same period. Such postponement will not effect an individual's right to one (1) automatic postponement under this section.

SECTION 8. Tennessee Code Annotated, Section 22-3-103, is amended by deleting such section in its entirety and substituting instead the following:

§ 22-3-103.

Either party to an action may challenge for cause any person who has an adverse interest in a similar suit involving like questions of facts or with the same parties.

SECTION 9. Tennessee Code Annotated, Section 22-4-108(f), is amended by deleting subdivision (1) and substituting instead the following:

(1)

(A) No employer shall discharge or in any manner discriminate against an employee for serving on jury duty if such employee, prior to taking time off, gives the required notice pursuant to subsection (a) to the employer that such employee is required to serve.

(B) No employer shall require or request that an employee use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury. Nothing in this subdivision (f)(1)(B) shall be construed to require an employer to provide annual, vacation, or sick leave to employees under the provisions of this section who otherwise are not entitled to such benefits under company policies.

SECTION 10. Tennessee Code Annotated, Title 22, Chapter 4, Part 1, is amended by adding the following as a new section thereto:

§ 22-4-110.

(a) The supreme court of Tennessee shall promulgate rules to establish a lengthy trial fund that shall be used to provide full or partial income replacement or income supplementation to jurors who serve as petit jurors for more than five (5) days, and who otherwise do not receive usual compensation from an employer as required by § 22-4-108, because the employer is exempt under § 22-4-108(e), or because the juror is self-employed or receives compensation other than wages. The court rules shall provide for the following:

(1) The selection and appointment of an administrator for the fund;

(2) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel;

(3) Procedures for the accounting, auditing and investment of money in the lengthy trial fund; and

(4) A report by the supreme court of Tennessee on the administration of the lengthy trial fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.

(b) Notwithstanding any other fees required under state law, each trial court in the state shall collect from each attorney who files a civil case, unless otherwise exempted under the provisions of this section, a fee of five dollars (\$5.00) per case to be paid into the lengthy trial fund. A lawyer will be deemed to have filed a case at the time the first pleading or other filing on which an individual lawyer's name appears is submitted to the court for filing and opens a new case. All such fees shall be forwarded to the administrator of the lengthy trial fund for deposit.

(c) The administrator shall use the fees deposited in the lengthy trial fund to pay full or partial income replacement or supplementation to the jurors who do not receive full regular wages from an employer when the period of jury service lasts more than five (5) days. Not more than five percent (5%) of the monies in the fund shall be used for the reasonable and necessary costs of administering the fund. The monies in the fund shall not be used for any purpose other than as prescribed in this section.

(d) Beginning January 1, 2008, the court may pay replacement or supplemental income of up to three hundred dollars (\$300) per day per juror beginning on the sixth day of jury service. Any juror who is serving or has served on a jury that qualifies for payment from the lengthy trial fund, provided the service commenced on or after the effective date of this act, may submit a request for payment from the lengthy trial fund on

a form that the administrator provides. Payment shall be limited to the difference between the state paid jury fee and the actual amount of income a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period. Documents submitted pursuant to this subsection (d) are not public records and shall not be disclosed to the general public.

(1) The form shall disclose the juror's regular income, the amount the employer will pay during the term of jury service starting on the eleventh day and thereafter, the amount of replacement or supplemental wages requested, and any other information the administrator deems necessary for proper payment.

(2) The juror also shall be required to submit verification from the employer as to the income information provided to the administrator, for example, the employee's most recent earnings statement or similar document, prior to initiation of payment from the fund.

(3) If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to that individual's approximate gross weekly income, together with such other information as the administrator may require, in order to verify weekly income.

(e) The following attorneys and causes of action are exempt from payment of the lengthy trial fund fee:

(1) Government attorneys entering appearances in the course of their official duties;

(2) Pro se litigants;

(3) Cases in small claims court or the state equivalent thereof; and

(4) Claims seeking social security disability determinations; individual veterans' compensation or disability determinations; recoupment actions for

government backed education loans or mortgages; child custody and support cases; actions brought in forma pauperis; and any other filings designated by rule that involve minimal use of court resources and that customarily are not afforded the opportunity for a trial by jury.

(f) Nothing in this section shall be construed to affect the obligations of employers under § 22-4-108.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect July 1, 2007, the public welfare requiring it.